

REMARKS

1) Amendments to the Claims

All of claims 1 – 70 have not been cancelled from the case. Some of these claims have been re-introduced into the case under new numbers. New claims 71 to 194 are introduced.

2) Unity of Invention, Requirements for Restriction; Possible Groupings of Claims for the Examiner's Consideration

The Examiner may wish to consider making a requirement for restriction in this matter. The claims as presently pending, namely claims 71 – 194, include the following groupings or strings of claims, which may (a) provide a basis for the making of a requirement for restriction in this matter; and (b) may permit the large range of inventive subject matter of the current disclosure to be addressed in an orderly manner by the Examiner:

Group A – Claims 71 – 94	Group G – Claim 178
Group B – Claims 95 – 122	Group H – Claim 179
Group C – Claims 123 – 148	Group I – Claims 180 – 183
Group D – Claims 149 to 169	Group J – Claims 184 – 179
Group E – Claims 170 – 176	Group K – Claims 190 – 194
Group F – Claim 177	

Subject to such actual Requirement for Restriction as may be made by the Examiner, the Applicant proposes first to prosecute the claims of Group A.

3) Reservation of Right to Refund of Excess Claim Fees

The Applicant expressly reserves the right to seek a refund of the excess claim fees paid in respect of this application in the event that

- (a) no Office Action on the merits should issue in this case prior to November 1, 2007; and
- (b) should (i) claims herein be cancelled from the case in response to a requirement for restriction; or (ii) claims be cancelled or withdrawn from this case to comply with the Rules that are formally to take effect as of November 1, 2007;

or according to such other right of refund as may apply.

4) Information Disclosure Statements and Cited References

An Information Disclosure Statement has already been submitted in this matter. The Applicants draw the Examiner's attention to the cross-listing of cases submitted herewith.

5) Reservation of Rights

By this amendment the Applicant has introduced an abnormally large number of claims into this case, a number that the Applicant would under most circumstances hesitate to place before the Examiner at a single time. However, in view of the notice of Final Rule Making published in the Federal Register on August 21, 2007, the Applicant feels compelled to advance claims at this point that the Applicant and the Examiner might otherwise have considered at a later date in prosecution. As Examiners Le and McCarray are aware, this case was, (and, indeed, all of the cases in the enclosed cross-listing chart were), drafted under a substantially different regulatory regime than is now to apply in consequence of the Rules published on August 21, 2007; that are ostensibly to come into force on November 1, 2007, and that, in reality have a very substantial, and prejudicial, retroactive effect on all cases currently pending.

In light of the highly prejudicial nature of the rule changes with respect to the current application, the Applicant expressly reserves the right to challenge any and all aspects of the newly made Rules either before the PTO or in appropriate venues of appeal from the PTO, at such time as the Applicants may see fit. In particular, the Applicant explicitly reserves its right to challenge:

- (a) the Rule making in and of itself as an exercise outside the delegated authority of the Commissioner under 35 USC 2;
- (b) the retroactive effect of the Rules on cases pending before August 21, 2007 (and, indeed, prior to November 1, 2007), which presents a very substantial taking of rights from the Applicant, and, indeed, from all Applicants having pending cases drafted under, and in contemplation of, a substantially different regulatory regime;
- (c) the lack of prior public notice of the Final form of the Rules, which is itself substantially different from the proposed Rules upon which public comment was received;

- (d) the limitations on the filing of continuation cases contrary to the express provisions of the statute at 35 USC 120, and contrary to established law under *In re Henriksen*; 399 F.2d 253, 158 USPQ 224 (CCPA 1968);
- (e) the arbitrary limitations on the filing of Requests for Continued Examination, seemingly contrary to the statute at 35 USC 132(b); and
- (f) Rules 1.75(b)(1) (the so-called “5/25” Rule) and Rule 1.265 (the “ESD” Rule) that have the practical effect of preventing, undermining, or curtailing an Applicant’s right to claim an invention as the Applicant sees fit, contrary to the Applicant’s right under 35 USC 112 of the Applicant to submit one or more claims particularly pointing out and distinctly claiming the subject matter which the *Applicant* regards as his invention, contrary to statute, and even contrary to the Patent Office’s own precedent (see *Ex parte Sheldon* 172 USPQ 319 BPAI 1971).

6) **Conclusion**

The Applicant respectfully submits the enclosed claims for the Examiner’s consideration. In the event that the Examiner should choose not to make a requirement for restriction, the Applicant would welcome a first Office Action on the merits, or, alternatively, a Notice of Allowance prior to November 1, 2007

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